

Before the  
Federal Communications Commission  
Washington D.C. 20554

In the Matter of	)	
	)	
Petition for Reconsideration of Commission	)	
Order for King and Queen Public Schools,	)	
King and Queen Courthouse, Virginia	)	FCC 03-23
	)	
Federal-State Joint Board on	)	
Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the	)	
National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

**Petition for Reconsideration of Commission Order**

In accordance with 47 CFR 1.106 (b)(2)(i) and (ii), King and Queen public schools, King and Queen Courthouse, Virginia hereby petitions the Federal Communications Commission to reconsider its Order, FCC 03-23, released February 4, 2003. We bring this Petition for Reconsideration before the Commission on the grounds that it relies on circumstances which have changed since the last opportunity to present such matters; and it relies on facts unknown to King and Queen until after King and Queen's last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.

**Facts Particular to this Petition for Reconsideration**

The two primary conditions under which the Commission shall entertain Petitions for Reconsideration of a denial of an application for review are if circumstances have changed since the last opportunity to present facts, or the petition relies on facts unknown after the last opportunity to present facts. In this instance, both conditions are applicable.

First, the Commission Order (Order)<sup>1</sup> denying King and Queen's application for review changed the circumstances of facts presented to the Commission verses the language in the Common Carrier Bureau (CCB) decision (Decision)<sup>2</sup> which lead to King and Queen's application for review. Second, because the Order changed the facts relative to the Decision, King and Queen had no knowledge or opportunity to address new issues raised in the Order. King and Queen felt language in the Decision rendered Item 22 omission moot, as it clearly fell under conditions of Naperville, according to the Decision. In contrast, the Order is silent on Block 1, Item 1 and appears to rely solely on the omitted Item 22 information as the basis for denial,<sup>3</sup> while the Decision clearly indicated Item 22 information was new information in Year 3 and not subject to minimum processing standards.<sup>4</sup> If King and Queen had this information prior to the Order, King and Queen would have presented facts to dispute the notion that omission of Item 22 information should be grounds for automatic rejection in Year Three. The Item 22 issue had been resolved in the Decision and no further action by King and Queen was necessary.

## **Background**

King and Queen County public schools submitted a Form 471 application for Universal Service, E-Rate discounts for Year Three (2000 – 2001) to the Schools and Libraries Division on January 19, 2000, within the designated filing window for that year. In its filing, King and Queen failed to complete Item 1, Block 1 and Item 22, Block 5 of the Form 471. The Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) rejected the application and returned it to King and

---

<sup>1</sup> Federal Communications Commission Order, FCC 03-23, Released February 4, 2003 (Order)

<sup>2</sup> Common Carrier Bureau decision DA 01-2796 Released December 4, 2001 (Decision)

<sup>3</sup> Order at 7

<sup>4</sup> Decision at 5

Queen for failing to meet Minimum Processing Standards. King and Queen appealed to the SLD and but was denied in correspondence dated June 15, 2000.

King and Queen subsequently requested review by the CCB of the SLD denial. On December 4, 2000 the CCB issued its Decision denying the appeal. On December 11, 2001 the CCB issued an erratum to its earlier Decision correcting certain errors contained within the initial Decision. The CCB stated: “Although Item 22, Block 5, was a new information request in Funding Year 3, Item 1, Block 1, the Billed Entity, was not new. Thus, the first requirement of Naperville is not satisfied.”<sup>5</sup>

King and Queen requested full Commission review of the CCB Decision on January 10, 2002. On February 4, 2003 the full Commission issued an Order denying King and Queen’s application for review. The Commission Order stated: “King and Queen’s arguments...only address whether this application should have been rejected due to the omission in Block 1. They do not cure the omission of the Block 5, Item 22 data.”<sup>6</sup>

Based on the conflicting opinions between the Order and Decision, with this Petition for Reconsideration, King and Queen presents facts to address the circumstances unknown to King and Queen at the time of filing the application for review. Specifically, that the Item 22 omission should be grounds for denial.

## **Discussion**

This Application for Review is now before the Commission because it appears as though the Commission has overruled the Decision of the CCB. In the Decision, the CCB ruled favorably on the question of minimum processing standards for Block 5, Item 22.<sup>7</sup> In that respect, the question of Item 22 had been decided. There was no further need to

---

<sup>5</sup> Decision at 5

<sup>6</sup> Order at 8

address Item 22 before the Commission. The Order however resurrects Item 22 as the basis for denial. This is the first opportunity for King and Queen to rebut findings of the Commission, thus allowing the opportunity for this Petition for Reconsideration.

The Order also does not absolutely rule favorably the Block 1 issue, rather the Order simply acknowledges King and Queen addressed the issue. Herewith this Petition for Reconsideration, King and Queen provides arguments on each item separately for Commission reconsideration.

#### Item 22, Block 5

Item 22, Block 5 of FCC Form 471 is where applicants indicate the discount calculation worksheet used to identify the E-Rate discount percentage for entities receiving services from a contract specified by a particular Block 5. Item 22 has two spaces for applicants to indicate whether the Block 5 represents a: site-specific or b: shared services. Applicants are to list an entity number for site-specific service, or a corresponding Block 4 Discount Calculation Worksheet for shared services. The entity responsible for paying the bills files the Form 471, also known as “Billed Entities”. Billed Entities filing the Form 471 indicate the type of application they represent on Block 1, Item 5. In this case, King and Queen indicated “School District” on Block 1, Item 5. By filing as a School District, King and Queen Public Schools identified itself as the governing authority over all eligible entities contained within the Form 471.

In the Order the Commission ruled that Naperville did not apply because, although the Item 22 was new for Year Three, the district average discount rate was the same as each school – 80 percent, and therefore was not “...uniquely attributable to the

---

<sup>7</sup> Decision at 5

average discount rate of all the schools...”<sup>8</sup> The circumstances in this case are absolutely identical to Naperville, with the exception that King and Queen had the misfortune of having identical discounts for all schools, resulting in the same discount rate for each individual school and the school division as a whole. While the majority of school district and consortium applicants have unique “weighted averages” because all entities within the application do not commonly share the same discount rate, nationwide a significant number of applicants – particularly small applicants with few entities - have the same discount rate for each entity. The formula for calculating the district average for shared services is based on the number of students enrolled in a particular school and the discount percentage of that school to create the weighted average for the district. The formula for calculating discounts for a consortium is to take the simple average of the discount rate for all eligible entities in the consortium. If all eligible entities listed on either a district application or a consortium application have identical discount percentages, the overall average discount will be identical to each individual entity. In the Order the Commission holds that solely because the weighted discount percentage for King and Queen is identical to each school, Naperville does not apply. Thus, the Commission seems to indicate that district or consortium applicants with weighted discount averages identical to eligible entities are held to a higher standard with respect to application rejection than applicants with unique weighted discount averages. This discriminates against small, typically rural school district and consortium applicants. It is patently unfair for the Commission to hold one class of applicants to a higher standard over others based simply on whether or not that class of applicants has a unique discount average.

---

<sup>8</sup> Order at 7

The second test of Naperville that the “...omitted information could be easily discerned by SLD through examination of other information included in the application”<sup>9</sup> should rest not with a unique discount rate, but with other information included in the application. In this case, King and Queen included the “Pre-Discount Optional Cost Calculation Grid” with the application. Item 4 on the Grid identifies the type of service requested, with choices being Shared Services: Telecommunications Services, Internal Connections, or Internet Access; or Site Specific Services: Internal Connections, Dedicated Services. King and Queen placed an “X” in the box indicating “Shared Services: Telecommunications Services” for all service providers. For this application, one can easily ascertain that all requested services are “shared” by all entities. Additionally, because King and Queen is a small school district, with only three schools, determination of which entities were to receive service should only take minutes. Again, the class of applicants with identical discount rates as the underlying entities will have very few entities listed in the application and therefore should be relatively easy for SLD to match service requests to entities when Item 22 information is lacking.

Because King and Queen submitted the Form 471 as a “School District,” FCC regulations afford a great deal of latitude with regard to regulatory compliance. The “School District” designation means King and Queen has absolute governance over all eligible entities within the application.<sup>10</sup> As such, King and Queen may act on behalf of all eligible entities contained in the application in all legal respects. As sovereign – or administrative authority - over the entities, King and Queen is, for example, able to certify compliance with the Children’s Internet Protection Act without the need for

---

<sup>9</sup> Order at 5

individual certifications from each entity. King and Queen, having authority over all entities and responsible for administration of the school division as a whole, for the purpose of Item 22 with all discount rates identical, the natural inclination should be to designate all services “shared” as a matter of course.

Finally, King and Queen is concerned that this ruling by the Commission overturns current minimum processing standards for funding Year Six applications now being processed by the SLD. According to FCC Form 471 instructions dated November 2001 and currently in force, the minimum processing standards for each Block 5 include:

- a. Item (11) – Category of Service;
- b. Item (13) or (14) – Either the Service Provider Identification Number or the Service Provider Name;
- c. Item (23) – At least one entry with a positive dollar value in Column E, H, I, or K must be completed.

There is absolutely no mention of Item 22 in the minimum processing standards. Based on minimum processing standards implemented with the November 2001 Form 471 instructions, King and Queen’s application should be processed.

Item 1, Block 1

King and Queen contends that Item 1, Block 1 of the Form 471 should not be grounds for automatic rejection, as that information can be easily ascertained from the form in a number of ways, including Item 3, Block 1, the headers of each Form 471 page, the Block 6 certification page, the Optional Cost Calculation Grid, or simply by calling the contact person in Block 1. Additionally, Minimum Processing Standards have been

---

<sup>10</sup> Wireline Competition Bureau Order in Craig County Public Schools, Virginia, DA 03-383, adopted February 6, 2003 and released February 7, 2003 at 11

revised for Funding Year Five and applications will no longer be rejected solely for omission of Block 1, Item 1.

In the Asociacion de Educacion Privada (AEP)<sup>11</sup> decision the CCB ruled that the SLD should have been able to easily determine missing information from Item 4a, Block 1, of AEP's Form 471. The CCB ordered that AEP's rejected application be remanded to SLD for processing. In this case, AEP did not provide the name of a city in the address category of Block 1, Form 471 and required under SLD minimum processing standards for Form 471 in place at that time. The CCB agreed with AEP's appeal that SLD should reasonably have been able to ascertain the city of the applicant using other documentation contained in the application.

In a related ruling by the CCB in an appeal filed by Methacton School District, Norristown, Pennsylvania,<sup>12</sup> the CCB ruled that incorrect information provided in one area of the Form 471 could be corrected during Application Review if the correct information was provided in another area. In the case of Methacton, an incorrect Universal Service Control Number (USCN) was listed in Item 12, Block 5 of the Form 471, but was correctly listed in the attached Optional Cost Calculation Grid. The CCB ruled that because the correct USCN was listed elsewhere in the application; in this case CCB specifically noted the correct information was provided in the Optional Cost Calculation Grid; the application should be remanded to SLD for further processing. In the King and Queen application presented here, the information omitted from Item 1, Block 1 was clearly included on the Optional Cost Calculation Grids attached to the application.

---

<sup>11</sup> Asociacion de Educacion Privada, DA 01-2290, released October 4, 2001

<sup>12</sup> Methacton School District, Norristown, Pennsylvania, DA 00-1046, released May 17, 2000

Subsequently, for E-Rate Year 5, the minimum processing standards have been substantially revised and liberalized. The Form 471 now only requires applicants to provide information on Block 1, Item 1 OR Item 3.<sup>13</sup> We believe new minimum processing standards should prevail when considering appeals of previously rejected applications. We also understand that the USAC E-Rate data entry contractor, NCS Pearson, was inconsistent in enforcing the Minimum Processing Standards, which may have precipitated the change in standards.

## **Conclusion**

King and Queen is a small relatively poor school district in rural Virginia with only three schools, each eligible for E-Rate discounts of 80 percent. The population base is largely agrarian with very little industry. The E-Rate program was enacted specifically to address the needs of school divisions such as this. Although King and Queen was denied funding in the 2000 – 2001 funding year, the board of education supported implementation of King and Queen's technology plan, including deployment of higher speed data connections to every school using limited school district funds. Though far short of robust broadband connections enjoyed by nearby urban school divisions, the modest network served King and Queen's needs.

Services under contracts associated with the discount filings have been rendered. Students and teachers had access to the Internet. Learning for both improved. More teachers had access to telephone service. Parents were able to more readily contact teachers and teachers able to reach parents. At this point, the only thing missing is substantial discounts entitled to King and Queen through the E-Rate program.

---

<sup>13</sup> FCC Form 471 Instructions – November 2001, Page 6

We ask the Commission to reconsider its decision to deny King and Queen's Application for Review and remand it to the SLD for further processing. We ask the Commission to do this on the basis of arguments presented in this Petition for Reconsideration. We ask the Commission to do this in the interest of fairness to the hundreds other similarly situated applicants sharing discount rates identical to the entities within the applications. Finally, we ask the Commission to do this in the public interest.

Respectfully submitted this 28<sup>th</sup> day of February, 2003

Dr. Alpheus Arrington Jr.  
Assistant Superintendent for Instruction  
King and Queen County Public Schools  
King and Queen Courthouse, Virginia

Rte 681 Off of Rte 14  
King and Queen Court House, VA 23085-0097  
(804) 785-5981